

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

MICHAEL PUNG, as the personal
representative of the ESTATE OF
TIMOTHY SCOTT PUNG,

Case No. 18-cv-1334
Hon. Robert J. Jonker

Plaintiff,

vs.

PETER M. KOPKE, in his personal
capacity; PATRICIA DEPRIEST, in
her personal capacity; STEVEN W.
PICKENS, in his official and personal
capacity, and COUNTY OF ISABELLA,

Defendants.

Outside Legal Counsel
Philip L. Ellison (P74117)
Attorney for Pung/Estate
P.O. Box 107
Hemlock, MI 48626
Ph: (989) 642-0055
pellison@olcplc.com

William Selesky (P77750)
Department of Attorney General
Asst. Attorney General - Labor Div.
Counsel for Kopke
P.O. Box 30217
Lansing, MI 48909
Ph: (517) 373-2560
SeleskyW1@michigan.gov

Cummings, McClorey, Davis & Acho, P.L.C.
Allan C. Vander Laan (P33893)
Bradley C. Yanalunas (P80528)
Counsel for Pickens/Isabella County
2851 Charlevoix Dr., SE, Ste. 327
Grand Rapids, MI 49546
Ph: (616) 975-7470
avanderlaan@cmda-law.com
byanalunas@cmda-law.com

Charles A. Lawler (P65164)
Clark Hill PLC
Counsel for DePriest
212 E. Cesar E. Chavez Ave.
Lansing, MI 48906
Ph: (517) 318-3100
clawler@clarkhill.com

**RESPONSE OF DEFENDANTS PICKENS AND COUNTY OF ISABELLA
OPPOSING PLAINTIFF'S MOTION TO CITE INAPPOSITE CASE LAW**

STATEMENT OF FACTS

Plaintiff Pung moves to offer ***Novak v. City of Parma***, 932 F.3d 421 (6th Cir. 2019) as belatedly discovered “authority” to support his “conspiracy” claim. This should be denied.

ARGUMENT

The ***Novak*** case does not (and cannot) undermine Supreme Court rejection of conclusory claims. ***Bell Atlantic Corp. v. Twombly***, 550 U.S. 544, 555 (2007), ***Ashcroft v. Iqbal***, 556 U.S. 662, 678 (2009). Mere allegations that Defendants met and agreed to unlawful conduct do not meet the “relatively strict” pleading standard for “conspiracy.” ***Gavitt v. Born***, 835 F.3d 623, 647 (6th Cir. 2016), ***Heyne v. Metropolitan Nashville Public Schools***, 655 F.3d 556, 563 (6th Cir. 2011). Conduct that “is just as consistent with independent conduct as it is with “conspiracy” will not support the claim. ***Hensley v. Gassman***, 693 F.3d 681, 695 (6th Cir. 2012).

The ***Novak*** case addressed First Amendment “retaliation,” where alleged retaliatory motive of police actors could state a plausible claim. Such is not the case here, where Defendant Pickens is obligated under M.C.L. 211.78 et seq. to proceed with foreclosure after an assessor (e.g., Defendant DePriest) exercises the assessor’s legal authority to declare a tax delinquency. M.C.L. 211.119, M.C.L. 211.24, M.C.L. 211.55, M.C.L. 211.57. Alleged ill-will by Pickens toward Pung is irrelevant. Foreclosure in light of DePriest’s assessment was the independent statutory obligation of Pickens (and Isabella County), wholly apart from any alleged “conspiracy.” Pung’s allegations are not enough to state a plausible “conspiracy” claim. ***Hensley***, 693 F.3d at 695.

RELIEF REQUESTED

The **Novak** case is inapposite here. This Court should deny Plaintiff Pung's belated offer of this so-called "authority."

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

/s/ Allan C. Vander Laan

Allan C. Vander Laan (P33893)

Bradley C. Yanalunas (P80528)

Attorneys for Defendant Steven Pickens
and County of Isabella

Cummings, McClorey, Davis & Acho. P.L.C.

2851 Charlevoix Drive, SE, Ste. 327

Grand Rapids, MI 49546

616/975-7470

Dated: December 27, 2019

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Philip L. Ellison
pellison@olcplc.com

William Selesky
SeleskyW1@michigan.gov

Charles A. Lawler
clawler@clarkhill.com

/s/Marie E. Jones

Legal Assistant

Cummings, McClorey, Davis & Acho, P.L.C.